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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/871,078	05/31/2001	Thomas D. Taggart	STEU-3250	9319

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EXAMINER

TAWFIK, SAMEH

ART UNIT	PAPER NUMBER
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3721

DATE MAILED: 11/05/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/871,078

Applicant(s)

TAGGART, THOMAS D.

Examiner

Sameh H. Tawfik

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 October 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 20 and 22-62 is/are pending in the application.
- 4a) Of the above claim(s) 23-34 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 20, 22 and 35-62 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 20, 22, 35-55, and 57-62 are rejected under 35 U.S.C. 103(a) as being unpatentable over BOSCH in view of De Stoutz (3,934,042).

BOSCH discloses a method and apparatus for aseptically bottling foodstuffs comprising the means for providing a plurality of bottles (Figs. On page 3); aseptically disinfecting the plurality of bottles (page 2, column 1); aseptically filling the aseptically disinfected plurality of bottles with the foodstuffs (page 2, columns 1 and 2); and aseptically disinfected plurality of bottles at a rate greater than 100 bottle per minute (page 2, column 1) the machine can be operated to produce 33,600 bottle per hour which is equal to 560 bottles per minute. BOSCH does not disclose aseptically filling the bottles with aseptically sterilized foodstuffs. However, Stoutz discloses the step and means for aseptically sterilized foodstuffs (column 1, lines 5-10).

Therefore, it would have been obvious to one with ordinary skill in the art at the time the invention was made to have modified BOSCH's method and apparatus for aseptically bottling foodstuffs by having the step and means for aseptically sterilized foodstuffs, as suggested by Stoutz, in order to increase the shelf life or storability of the treated beverage (column 1, lines 22-24)

Regarding claims 46 and 61: BOSCH does not disclose specifically the level of disinfecting the containers to at least 6 log reduction in spore organisms. However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified BOSCH's method for aseptically packaging aseptically sterilized foodstuffs by having the level of disinfecting the containers to at least 6 log reduction in spore organisms, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

Regarding claim 37 and 51: the reference of the prior art discloses the claimed invention except for the plastic is high density polyethylene. However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified COSCH's method for aseptically packaging aseptically sterilized foodstuffs by having plastic with high density polyethylene, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin; supra*.

Regarding claim 39: BOSCH discloses capping the container with aseptically disinfected lid (page 2, column 1).

Regarding claim 40: BOSCH discloses disinfecting the interior of the plurality of containers with a hydrogen peroxide (page 2, column 1).

Regarding claims 41, 43, 52, 53, and 57: BOSCH discloses disinfecting the interior of the plurality of the plurality of container includes the application of the hydrogen peroxide spray and the activation and removal of the hydrogen peroxide using a sterilized air (page 2). BOSCH does not disclose the range of the application of the hot hydrogen peroxide for about 1 second

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and the removal of the hot hydrogen peroxide using hot air about 24 seconds. However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified BOSCH's method for aseptically packaging aseptically sterilized foodstuffs by having range of the application of the hot hydrogen peroxide for about 1 second and the removal of the hot hydrogen peroxide using hot air about 24 seconds, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233.

Regarding claims 42 and 54: BOSCH discloses a feedback control system (page 2, line 3) for maintaining aseptic container conditions.

Regarding claims 45, 47, 60, and 62: BOSCH does not disclose specifically the exact level of the sterilization of the foodstuffs to at least 12 log reduction in clostridium botulinum nor the residual level of hydrogen peroxide is less than .5ppm. However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified BOSCH's method for aseptically packaging aseptically sterilized foodstuffs by having the level of the sterilization of the foodstuffs to at least 12 log reduction in clostridium botulinum and the residual level of hydrogen peroxide is less than .5ppm, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

Claim 56 is rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claim 1 above, and further in view of B. Poole (2,491,015).

Regarding claim 56: BOSCH disclose that disinfecting the container from the outside surfaces (page 2, column 1).

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Response to Arguments

In view of applicant's arguments in the appeal brief filed on 10/18/2002 and up further consideration claims 20, 22, and 35-62 have been considered but are moot in view of the new ground(s) of rejection. The finality of paper number 9 have been withdrawn.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sameh H. Tawfik whose telephone number is (703) 308-2809. The examiner can normally be reached on Monday - Friday from 8:00 AM to 4:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rada, Rinaldi can be reached on (703) 308-2187. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 305-3579 for regular communications and (703) 308-7769 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1148.

ST.

October 30, 2002



**EUGENE KIM
PRIMARY EXAMINER**